

§ 1.457-1

26 CFR Ch. I (4-1-02 Edition)

Year of receipt	Total receipts	1961	1962	1963	1964	1965	1966	1967	1968
1963	3,000	.....	.....	500	1,000	1,000	\$500	.....	.....
1964	3,000	.....	.....	.....	500	1,000	1,000	\$500	.....
1965	3,000	.....	.....	.....	.....	500	1,000	1,000	\$500
1966	3,000	.....	.....	.....	.....	.....	500	1,000	1,000
1967	3,000	.....	.....	.....	.....	.....	.....	500	1,000
1968	3,000	.....	.....	.....	.....	.....	.....	.....	500
Total reportable under section 456(a)		500	1,500	2,500	3,000	3,000	3,000	3,000	3,000

(2) Under section 456(d) (1), X Corporation must include in its gross income for the first taxable year to which the election applies and for each of the 2 succeeding taxable years, the amounts which would have been

included in those years had the election been effective 3 years earlier. If the election had been effective in 1958, the following amounts received in 1958, 1959, and 1960 would have been reported in 1961 and subsequent years:

Year of receipt	Amount received	Years of including additional amounts		
		1961	1962	1963
1958	\$3,000	\$500	.....	.....
1959	3,000	1,000	\$500	.....
1960	3,000	1,000	1,000	\$500
Total additional amounts to be included under section 456(d)(1)		2,500	1,500	500

(3) Having included the additional amounts as required by section 456(d)(1), and assuming such amounts were actually included in gross income in the 3 taxable years preceding the first taxable year for which the election

is effective, X Corporation is entitled to deduct under section 456(d)(2) in the year of inclusion and in each of the succeeding 4 years an amount equal to one-fifth of the amounts included, as follows:

Year of inclusion	Amount	Years of deduction							
		1961	1962	1963	1964	1965	1966	1967	
1961	\$2,500	\$500	\$500	\$500	\$500	\$500	.....	.....
1962	1,500	.....	300	300	300	300	\$300	.....
1963	500	.....	.....	100	100	100	100	\$10
Total amount deductible under section 456(d)(2)		500	800	900	900	900	400	100	

(4) The net result of the inclusions under section 456(d)(1) and the deductions under

section 456(d)(2) may be summarized as follows:

	1961	1962	1963	1964	1965	1966	1967	1968
Amount includible under section 456(a)	\$500	\$1,500	\$2,500	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000
Amount includible under section 456(d)(1)	2,500	1,500	500	.....	.....	.....	.....	.....
Total	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000
Amount deductible under section 456(d)(2)	500	800	900	900	900	400	100	.....
Net amount reportable under section 456	2,500	2,200	2,100	2,100	2,100	2,600	2,900	3,000

[T.D. 6937, 32 FR 16396, Nov. 30, 1967]

§ 1.457-1 Compensation deferred under eligible State deferred compensation plans.

ning after December 31, 1978, section 457(a) provides that amounts deferred (within the meaning of § 1.457-1(d)(3))

(a) Year of inclusion in gross income—
(1) In general. For taxable years begin-

under an eligible State deferred compensation plan that satisfies the requirements of §1.457-2 (an “eligible plan”) are includible in gross income only for the taxable year in which paid or otherwise made available to the participant or beneficiary under the plan.

(2) *Maximum deferral; in general.* Under section 457(c)(1), the exclusion from gross income described in this paragraph (a) does not apply to compensation deferred under one or more eligible plans to the extent that the compensation so deferred during a participant’s taxable year exceeds the greater of—

(i) \$7,500, or,

(ii) As applicable, the sum of the plan ceilings determined under §1.457-2(f), to the extent such sum does not exceed \$15,000.

(3) *Maximum deferral; exclusions under section 403(b) taken into account.* Under section 457(c)(2), for a participant’s taxable year for which an amount is contributed to an annuity contract described in section 403(b) (including a custodial account described in section 403(b)(7)) on behalf of the participant, subparagraph (2) of this paragraph (a) is applied by substituting—

(i) For \$7,500, an amount equal to \$7,500, less the amount excludable from the participant’s gross income under section 403(b) for the taxable year,

(ii) For the sum of the plan ceilings determined under §1.457-2(f), an amount equal to the sum of the plan ceilings determined under §1.457-2(f), less the amount excludable from the participant’s gross income under section 403(b) for the taxable year, if such amount is not taken into account under such §1.457-2(f), and

(iii) For \$15,000, an amount equal to \$15,000, less the amount excludable from the participant’s gross income under section 403(b) for the taxable year.

(b) *Amounts made available to participant or beneficiary—(1) In general.* For purposes of section 457(a) and this section, amounts deferred under an eligible plan will not be considered made available to the participant or beneficiary if under the plan the participant or beneficiary may irrevocably elect, prior to the time any such amounts become payable, to defer pay-

ment of some or all of such amounts to a fixed or determinable future time. In addition, amounts deferred (including amounts previously deferred) under an eligible plan will not be considered made available to the participant solely because the participant is permitted to choose among various investment modes under the plan for the investment of such amounts whether before or after payments have commenced under the plan.

(2) *Examples.* Further examples of when amounts deferred will or will not be considered as being made available to the participant or beneficiary are provided below:

Example (1). (i) C, an individual, is a participant in an eligible State deferred compensation plan that provides the following:

(A) The total of the amounts deferred under the plan is payable to the participant in 120 substantially equal monthly installments commencing on the date 30 days after the participant attains normal retirement age under the plan (age 65), unless the participant elects, within the 90 day period ending on the date the participant attains normal retirement age, to receive a single sum payment of the deferred amounts. The single sum payment is payable to a participant on the date the first of the monthly payment would otherwise be payable to the participant.

(B) If a participant separates from the service of the State before attaining normal retirement age, the total of the amounts deferred under the plan is payable to the participant in a single sum payment on the date 90 days after the date of the separation, unless, before the date 30 days after the separation, the participant elects not to receive the single sum payment. The election is irrevocable. If the participant makes the election, the total of the amounts deferred under the plan is payable to the participant as described in (A), either in monthly installments or, at the election of the participant, in a single sum payment.

(i) On June 6, 1982, C, a calendar year taxpayer aged 59, separates from the service of the State. On June 18, 1982, C elects not to receive the single sum payment payable on account of the separation. Because of C’s election, no amount deferred under the plan is considered made available in 1982 by reason of C’s right to receive the single sum payment.

(iii) On February 6, 1988, C attains age 65. C did not, within the 90 day period elect the single sum payment that is payable in lieu of the monthly installments. Amounts deferred under the plan are includible in C’s gross income as they are paid to C in the monthly

installments. No amount is considered made available by reason of C's right to elect the single sum payment.

Example (2). Assume the same facts as in example (1), except that the plan provides that notwithstanding that monthly installments have commenced under the plan, as described in (i)(A), the participant may, without restriction, elect to receive all or any portion of the amount remaining payable to the participant. The total of the amounts deferred under the plan is considered made available in 1988.

Example (3). Assume the same facts as in example (1), except that the plan provides that once monthly installment payments have commenced under the plan, as described in (i)(A), the participant may accelerate the payment of the amount remaining payable to the participant upon the occurrence of an unforeseeable emergency as described in § 1.457-2(h)(4) in an amount not exceeding that described in § 1.457-2(h)(5). No amount is considered made available to C on account of C's right to accelerate payments upon the occurrence of an unforeseeable emergency.

Example (4). Under an eligible plan of which individual D is a participant, normal retirement age is age 65 at which time payments must begin. Payments may begin earlier upon a separation from the service. Under the plan, a participant who separates from the service before age 65 or the participant's beneficiary (if the separation is due to the participant's death) may elect to defer the distribution of the amounts deferred until the year in which the participant attains or would have attained age 65. This election may be made only prior to the time any payments commence and once made may not be revoked. If such an election is made, the participant, former participant, or beneficiary need not elect the method of payment, or if one is elected may change the method elected, until the date 30 days preceding the date upon which payments are to commence. No amount is considered made available by reason of D's right to defer the distribution of the amounts deferred until age 65, nor on account of D's right to delay the election of the method of payout. Similarly, if D dies at age 60, no amount is considered made available to D's beneficiary by reason of the beneficiary's right to defer the distribution of the amounts deferred until the year in which D would have attained age 65, nor on account of the beneficiary's right to delay the election of the method of payout.

Example (5). Under an eligible plan of which individual E is a participant, the maximum that may be deferred in any taxable year is 33½% of includible compensation, not to exceed \$7,500. The plan does not provide for a catch-up deferral under section 457(b)(3). In one taxable year, E elects to have amounts deferred in excess of the limitation provided

for under the plan. The amounts deferred in excess of the limitation will be considered to have been made available to E in the taxable year in which deferred.

Example (6). Assume the same facts as in example (5), except that E's employer also contributes amounts for the purchase of an annuity contract under section 403(b). In one taxable year, E has amounts contributed for the annuity within the limitations of section 403(b)(2), and also has amounts deferred under the eligible plan for the same year. The aggregate of the amounts contributed for the annuity contract and the amounts deferred under the plan exceed the deferral limitations under the plan. The excess deferrals will be considered made available to E in the year in which the amounts were deferred.

Example (7). Under an eligible plan of which F is a participant, amounts deferred have been invested in a money market investment fund. The plan then transfers the amounts deferred to a life insurance company for the purchase of life insurance contracts as an investment medium. However, the entity sponsoring the plan (1) retains all of the incidents of ownership of the contracts, (2) is the sole beneficiary under the contracts, and (3) is under no obligation to transfer the contracts or to pass through the proceeds of the contracts to any participant or a beneficiary of any participant. The movement of the amounts deferred to the life insurance company (whether or not made at the request of any plan participant) will not be considered to make the amounts available to the plan's participants. The cost of current life insurance protection under the life insurance contracts will not be considered made available to the plan's participants.

(c) *Life insurance proceeds and death benefits paid under eligible plan.* No amount received or made available under an eligible plan is excludable from gross income under section 101(a) (relating to life insurance contracts) or section 101(b) (relating to employees' death benefits).

(d) *Definitions.* For purposes of §§ 1.457-1 through 1.457-4:

(1) *Participant.* "Participant" means an individual who is eligible under § 1.457-2(d) to defer compensation under the plan.

(2) *Beneficiary.* "Beneficiary" means a beneficiary of a participant, a participant's estate, or any other person whose interest in the plan is derived from the participant.

(3) *Amounts deferred.* "Amount(s) deferred" under an eligible plan means compensation deferred under the plan,

plus income attributable to compensation so deferred. Income attributable to compensation deferred under an eligible plan includes gain from the disposition of property. The term "amounts deferred" includes amounts deferred in taxable years beginning before January 1, 1979, if such amounts were deferred under a plan described in § 1.457-2(b), and such amounts were made a part of an eligible plan.

[T.D. 7836, 47 FR 42337, Sept. 27, 1982]

§ 1.457-2 Eligible State deferred compensation plan defined.

(a) *In general.* For purposes of §§ 1.457-1 through 1.457-4, an "eligible State deferred compensation plan" (sometimes referred to as "eligible plan") is a plan satisfying the requirements of paragraphs (c) through (k) of this section.

(b) *Plan.* For purposes of this section and § 1.457-3, the term "plan" includes any agreement or arrangement between a State (within the meaning of paragraph (c) of this section) and a participant or participants, under which the payment of compensation is deferred, but only if such agreement or arrangement is not described in § 1.457-3(b).

(c) *State.* The plan must be established and maintained by a State. For this purpose, the term "State" includes:

(1) The 50 states of the United States and the District of Columbia;

(2) A political subdivision of a State;

(3) Any agency or instrumentality of a State or political subdivision of a State;

(4) An organization that is exempt from tax under section 501(a) and engaged primarily in providing electrical service on a mutual or cooperative basis; and

(5) An organization that is described in section 501(c)(4) or (6) and exempt from tax under section 501(a) and at least 80% of the members of which are organizations described in subparagraph (4).

Where it appears in this § 1.457-2, the term "State" means the entity described in this paragraph (c) that sponsors the plan.

(d) *Participants.* The plan must provide that only individuals who perform services for the State, either as an em-

ployee of the State or as an independent contractor, may defer compensation under the plan.

(e) *Maximum deferrals*—(1) *In general.* The plan must provide that the amount of compensation that may be deferred under the plan for a taxable year of a participant shall not exceed an amount specified in the plan (the "plan ceiling"). Except as described in paragraph (f) of this section, a plan ceiling shall not exceed the lesser of:

(i) \$7,500, or

(ii) 33 $\frac{1}{3}$ % of the participant's includible compensation for the taxable year, reduced by any amount excludable from the participant's gross income for the taxable year under section 403(b) on account of contributions made by the State.

(2) *Includible compensation.* For purposes of this section, a participant's includible compensation for a taxable year includes only compensation from the State that is attributable to services performed for the State and that is includible in the participant's gross income for the taxable year. Accordingly, a participant's includible compensation for a taxable year does not include an amount payable by the State that is excludable from the employee's gross income under section 457(a) and § 1.457-1 or under section 403(b) (relating to annuity contracts purchased by section 501(c)(3) organizations or public schools), section 105(d) (relating to wage continuation plans) or section 911 (relating to citizens or residents of the United States living abroad). A participant's includible compensation for a taxable year is determined without regard to any community property laws.

(3) *Compensation taken into account at its present value.* For purposes of subparagraph (1) of this paragraph, compensation deferred under a plan shall be taken into account at its value in the plan year in which deferred. However, if the compensation deferred is subject to a substantial risk of forfeiture (as defined in section 457(e)(3)), such compensation shall be taken into account at its value in the plan year in which such compensation is no longer subject to a substantial risk of forfeiture.

(f) *Limited catch-up*—(1) *In general.* The plan may provide that, for 1 or